

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TOBY VALLEJOS,

Petitioner,

vs.

No. CIV 23-0008 JB/KBM

STATE OF NEW MEXICO; HECTOR RIOS,
Warden, and RAUL TORRES, Attorney
General,

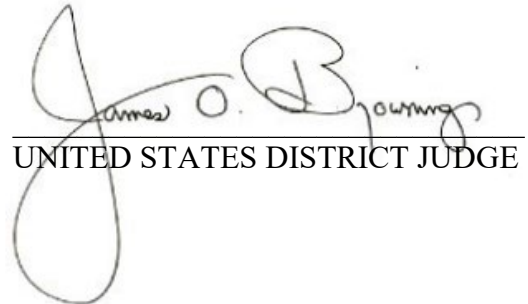
Respondents.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Petitioner’s Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed January 3, 2023 (Doc. 2)(“Motion”). Petitioner Toby Vallejos is incarcerated and proceeding pro se. See Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus By a Person in State Custody at 1, filed January 3, 2023 (Doc. 1)(“Habeas Petition”). Vallejos seeks to prosecute his Habeas Petition without prepaying the \$5.00 habeas filing fee. See Motion at 1. The Court may only grant such relief where a petitioner’s “affidavit [and] . . . statement of . . . assets [demonstrates] that the [petitioner] is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). Vallejos’ inmate financial statement reflects a balance of \$546.83. See New Mexico Corrections Department Inmate Trust Account, Account Transaction History from 5/01/2022 to 12/14/2022, filed January 3, 2023 (Doc. 2 at 5). The Court concludes Vallejos can afford to prepay the \$5.00 habeas filing fee, and must, therefore, deny the Motion. Vallejos shall pay the \$5.00 habeas filing fee within thirty days of this Memorandum Opinion and Order’s entry. Failure to timely comply with this Memorandum Opinion and Order will result in the dismissal of this action without further

notice.

IT IS ORDERED that: (i) the Petitioner's Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed January 3, 2023 (Doc. 2), is denied; and (ii) Petitioner Toby Vallejos must submit the \$5.00 habeas filing fee within thirty days of this order's entry.



UNITED STATES DISTRICT JUDGE

Parties:

Toby Vallejos
Chaparral, New Mexico

Petitioner pro se